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OFFICE OF PETITIONS

In re Patent No. 5,891,260 :
Issue Date: April 6, 1999 :
Application No. 08/795,038 : DECISION ON REQUEST FOR REFUND
Filed: February 5, 1997 :
Attorney Docket No. BENHAM.002 :

This is a decision on the request filed February 18, 2011, under 37 CFR 1.181(no fee), requesting refund of the maintenance fee paid on the above patent.

The request is **DISMISSED**.

Applicant files the above request for refund of the maintenance fees paid on June 22, 2006 and on September 8, 2010, and states that "On November 6, 2003, a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent was filed which indicated the Patentee's claim as small entity status (see attached). The Petition was granted on November 26, 2003. However, during this filing, the Patentee's status was shown as a large entity instead of a small entity. The Patentee has always claimed to be and continues to be a small entity. Therefore, please correct the Patentee's status as a large entity to a small entity and refund the difference in maintenance fees paid."

The request under § 1.181 is based on an allegation that patentee has always been a small entity and that therefore the Office improperly made credit card charges in large entity amounts rather than small entity amounts. Note, the issue fee was paid as a large entity.

The Office has accepted a small entity 3.5 year maintenance fee. Presumably that was based on the November 12, 2003, unintentional petition at page two (2) claiming small entity status.

Section 1.26(b) provides that requests must be submitted within two (2) years from the date of payment. Therefore, the June 22, 2006 payment may not be subject to a current refund. The September 8, 2010 payment may be subject to a current refund. However, Office PALM records do not currently show a small entity status for the patent. The Office will be presumed to have charged the correct amount of the subsequent 7.5 and 11.5 year maintenance fees as were authorized. Also, the refund request does not attach the papers authorizing the amounts paid, so that the Office can determine that incorrect amounts were in fact charged.

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Thus, in view of the above, the request for refund is dismissed at this time.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions